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ON

PARLIAMENTARY DIVORCE IN CANADA

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A BRIEF SKETCH OF THE LAW AND PROCEDURE.

Reprinted from the Canadian Law Times of March, 1888.

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IN Bouvier's Law Dictionary, the word "Divorce" is defined as "the dissolution or partial suspension by law of the marriage relation. The dissolution is termed divorce from the bond of matrimony: or in the Latin form of the expression, *à vinculo matrimonii*; the suspension, divorce from bed and board, *à mensa et thoro*. The former divorce puts an end to the marriage; the latter leaves it in full force."

Divorce in England.—Prior to 1858, jurisdiction to dissolve marriage was not entrusted to any ordinary Court of Justice, but reserved to the Legislature. An attempt was made in the reign of Queen Elizabeth, by the Ecclesiastical Courts, to usurp such jurisdiction, and some decrees of divorce *à vinculo matrimonii* were pronounced, but the Star Chamber interfered and stopped the practice. The theory on which these Courts seem to have proceeded in making such decrees was, that since the Reformation marriage had ceased to be one of the Sacraments of the Church, and therefore, that the contract between the parties could be dissolved upon breach of the promise upon which the contract rested. However this may be, the Ecclesiastical Courts desisted from the exercise of this novel jurisdiction. The consequence was, that no judicial tribunal could give complete redress for the greatest matrimonial grievance, and so the practice at length sprung up of obtaining private Acts of Parliament to release parties *a vinculo matrimonii*, and to enable them to marry again. In process of time, Orders were made by Parliament to regulate the passage of such Bills, and to give to proceedings on them a judicial and inquisitorial character (*a*).

The measure of relief was a costly one, available only to the wealthier members of society. Hence Parliament endeavoured to create a Court of Justice where all suitors might obtain complete redress for matrimonial wrongs,

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(*a*) *Pritchard's* Divorce Practice 1874.

and at a cost within reach of even the humbler classes of society. The result was, the constitution in 1858, of the Court of Divorce and Matrimonial Causes. Power was given that tribunal in certain cases, and for certain specific reasons, to grant a divorce and dissolution of the marriage tie, and by the Judicature Act that jurisdiction has now become vested in the High Court of Justice, and is administered in the Probate and Divorce Division. The old Ecclesiastical jurisdiction, except in respect to marriage licenses, now vests in the above Division; therefore the jurisdiction of the Divisions, where established, is sole and complete in all matters relating to marriage. What those matters are, may be gathered from the Act itself. They are (i) suits for dissolution of marriage, formerly divorce *a vinculo matrimonii*; (ii) nullity of marriage; (iii) judicial separation, formerly divorce *a mensa et thoro*; (iv) restitution of conjugal rights; and (v) jactitation of marriage. The Division has also further jurisdiction, created by the above, and extended by subsequent amending Acts, in relation to other matters, arising out of the above proceedings or incidental to them. These are as follows:—(vi) alimony in certain cases; (vii) custody of children; (viii) the application of damages recovered from an adulterer; (ix) the settlement of the property of the parties; (x) the protection of the wife's property in certain cases; and (xi) the reversal of the decree of judicial separation, and the decree *nisi* for a divorce, and a similar decree of nullity of marriage (*b*).

The Acts apply to England exclusively; therefore the House of Lords has still jurisdiction over cases in India, Ireland, and other countries beyond the jurisdiction of the Court (*c*)

Divorce in Canada.—The English practice of legislating for each particular case was first established in Upper Canada in 1840, when a Bill was passed by the legislature for the relief of John Stuart, whose wife had eloped and committed adultery (*d*). During the next twenty-seven years, only three such divorce bills were passed by the Legislature of the Province of Canada (*e*).

(*b*) *Dixon* on Divorce, pp. 2, 3.

(*c*) *May.* p. 767.

(*d*) 3 Vict. cap. 72.

(*e*) *Beresford*, 1853: *McLean*, 1859 and *Benning*, 1864.

In the distribution of legislative power, the British North America Act, 1867, section 91, conferred upon the Parliament of Canada exclusive legislative authority in relation to Marriage and Divorce. That section must be read subject to the provisions of sec. 129, whereby all laws in force in the then Provinces of Canada, Nova Scotia and New Brunswick at the Union, and all Courts of civil and criminal jurisdiction, etc., existing therein at the Union, were continued in such Provinces respectively, as if the Union had not been made; and section 146 extended the provisions of this Act to other provinces admitted to the Union.

The portions of the Dominion over which the Parliament of Canada has not assumed control in the matter of marriage and divorce are Nova Scotia, New Brunswick, Prince Edward Island and British Columbia. In these Provinces there existed at the time of the Union, Courts of Divorce, and they still continue to exercise their functions. With the exception of Prince Edward Island, they appear to have been modelled after the English Court of Divorce and Matrimonial Causes, and the procedure and practice of that Court is followed as closely as circumstances will permit. In Prince Edward Island, a Court of divorce and alimony was established as far back as 1836.

Parliamentary Divorce.—There being no Divorce Court in the remainder of the Dominion, comprising Ontario, Quebec, Manitoba and the Northwest Territories, recourse for relief must be had to the Parliament of Canada. The Journals of the Legislatures of Upper Canada, the Province of Canada, and the Dominion, show repeated unsuccessful attempts to remove from the Legislature the duty of dissolving the marriage tie, but the religious views of a large portion of the legislators on the sacredness of the marriage contract have always proved an obstacle, and it is no doubt out of deference to such religious scruples that the Protestants have not pressed more urgently for the establishment of a Court.

It is rather curious that the Province of Quebec—the part of the Dominion from which comes the most vigorous opposition to divorce—should be really in advance of Ontario, Manitoba and the Northwest Territories in the matter of matrimonial relief. The Courts of that Province have long been able to grant a *separation de corps*, the equivalent of a judicial separation under the English Divorce Court practice. Again we find by Article 117 of the Civil Code, that the Courts have power to annul a marriage on the ground of impotency. "Impotency, natural or accidental, existing at the time of the marriage, renders it null; but only if such impotency be apparent and manifest. This nullity cannot be invoked by any one but the party who has contracted with the impotent person" (*f*).

There is no law which defines the ground upon which parliamentary divorces may be granted, but the impression has prevailed that while there is no limitation to the power of Parliament to grant divoces for any cause, it will not give effect to any applications except upon the ground of adultery—the sole ground recognized by the Parliament of the United Kingdom before the establishment of the Court in 1858. This has led to a circuitous method of obtaining relief in the *Stevenson* (1869) case, which was really an application to nullify a marriage. In that case the petitioner, when only seventeen years of age, was inveigled into the ceremony. The marriage was not consummated by cohabitation—the parties separating immediately after the marriage ceremony—yet in order to obtain relief, the old principle that the bill must directly charge adultery had to be maintained, and the woman having married again, was branded as an adulteress.

In the *Ash* and *Lavell* cases in 1887, which were really applications to nullify marriages, the former being an application to determine the validity of a foreign decree dissolving a Canadian marriage, and the latter an application to dissolve a marriage performed as a joke under false names, and of which there had been no consummation by cohabitation, the notices of application, the petitions and the preambles to the bills, while setting out these facts, and asking for relief, asked in the alternative for bills of divorce on the ground of adultery. This

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(*f*) *Dorion* v. *Laurent* 17 L.C. Jur. 324; *Lussier* v. *Archambeault*, 11 L. C. Jur. 53; *Langevin* v. *Barrette*, 4 Rev. Leg. 160.

attempt to maintain the old principle, notwithstanding the fact that there had been no adultery, proved so shocking to the good feelings of many members of both Houses that Parliament in the exercise of its supreme and unfettered powers, eliminated from the preambles the words directly charging adultery and moulded the bills in accordance with the ascertained facts.

In both cases the idea that Parliament would only follow the practice of the English Parliament in granting bills of divorce received a wider interpretation. In the *Ash* case, the Minister of Justice, an eminent jurist, stated that he understood the principle to be that bills of divorce would be granted upon the same evidence and under the same circumstances as applications would be granted before the judicial tribunal in the mother country which has jurisdiction over such a subject.

In the debate on the *Lavell* case, Senator Gowan, also an eminent jurist took the broader ground that Parliament is supreme in its power, the custodian of the morals and well being of society; the *maker*, not the *expounder* of the law—is, in short, the highest tribunal in the land—the High Court of Parliament, and as such is not, and can not be bound by any rule, law or authority in the measure or extent of the relief it may grant. This view, no doubt, largely contributed to the moulding of the bills in these two cases to meet the actual facts.

The marriage ceremony, the domicil of the parties, and the *locus delicti*, or the place where the matrimonial offence for which relief is sought, was committed, are all incidents more or less material in the first instance to every application for dissolution of marriage (*h*).

By the B. N. A. Act, 1867, sec. 92, the power of making laws respecting the solemnization of marriage is conferred exclusively upon the Provincial Legislatures. In some of the Provinces of the Dominion, Justices of the Peace are, with the resident clergy of any denomination, empowered to celebrate the marriage ceremony, but as a rule the ceremony is performed by the clergy, and this while tending to throw around the marriage tie a halo

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(*h*) *Dixon*, p.

of [illegible] system of registration valuable as evidence, as all clergymen are required by the laws of their Provinces to make annual returns of marriages celebrated by them to the provincial authorities. In the Province of Quebec marriages are regulated by the Civil Code of Lower Canada but their registration is [illegible] by statute.

In a new country like Canada many of [illegible] [1]

[illegible]

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[1] [illegible]

[2] [illegible]

[3] [illegible]

[illegible] No Grand Lodge [illegible]
Craft masonry.

[illegible] following [illegible]
[illegible]

Rule 1. [illegible]

Rule [illegible]

Rule [illegible]

Rule [illegible]

[illegible]

Rule 15. When [illegible]

Rule 16. Any [illegible]

Rule 17. [illegible]

[illegible] of domicil when the nature of the residence is incon- [illegible] presumption of. the existence of an [illegible] *animus manendi*)" (l).

[illegible] well as the effect of a decree of a [illegible] marriage which had taken place in [illegible] discussed in the *Ash* case. The facts [illegible] —Manton married Susan Ash in [illegible] she lived with him there for six [illegible] his consent to visit her father in [illegible] weeks later she found his property [illegible] up housekeeping. She resided [illegible] that his intemperate habits [illegible] she left him shortly after- [illegible] and returned to her [illegible] continuously resided. [illegible] obtained from the [illegible] from Susan Ash, on [illegible] deserted his home. There was no evi- [illegible] than the recital in the decree, [illegible] in the application to Parliament. [illegible] of five consecutive years preceding [illegible] the Massachusetts Court. Manton [illegible] Boston. On 3rd Sept., 1874, Manton married [illegible] a woman named Hatch and they [illegible] there living as husband [illegible] Susan Ash founded her application [illegible] alleging that the decree being for a [illegible] the decree was null, and there- [illegible] bigamous. The Minister of Justice, in [illegible] lengthy and lucid speech, expressed the opinion that Manton [illegible] Massachussetts because the evidence in the [illegible] that Manton had been there otherwise than [illegible] prior to the date of the decree, or that he

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(l) [illegible] Law of Domicil, pp. 3, 9. The leading cases on domicil are *Brook* v. *Brook*, [illegible] H. L. Cas. 193; *Sottomayer* v. *De Barros*, 3 P D. 1, 5; *Simonin* v. *Mallac* 2 Sw. & Tr. 67; *Dalrymple* v. *Dalrymple*, 2 Hagg. C. 54; *Pitt* v. *Pitt*, 4 Macqueen H. L. Cases, 627: *Dalhousie* v. *McDonell*, 7 C. & F. 817: *Harrie* v. *Farnie*, L. R. 8 App. Ca. 43; *Delphin* v. *Robins*, 7 H. L. Cases 390; *Shaw* v. *Attorney-General*, L. R. 2 P. & D. 156; *Niboyet* v. *Niboyet*, 4 P. D. 1.

had a home there, or that he was there for anything but the temporary purpose of obtaining a divorce, while there was a presumption to the contrary from the fact of his having resided in Kingston a married man and of his having contracted a second marriage at Stirling soon after the date of the decree. He further contended that the recital in the decree of a residence of five years was no evidence of acquisition of a domicil, because the decree itself was valueless until it had been ascertained that the Court had jurisdiction over the subject matter and the person. The mere allegation in a decree that the Court has jurisdiction is insufficient. The principles deduced from his argument and the authorities cited were :—

1. That before any foreign tribunal can alter the marriage *status* and dissolve the marriage of persons married in Canada who apply for that relief, the applicant must have been domiciled or have a *bona fide* residence in that country in order to entitle the divorce to recognition in Canada.

2. That with any such decree of divorce it must also be proved that the foreign court had jurisdiction over the subject matter and person in the case.

3. Although it is a general principle of law that the husband's domicil is also that of his wife, the wife does not forfeit the rights she has to assert against him when he is acting in violation of his marriage duties (*m*). In support of this he cited from a judgment of Mr. Justice Gwynne, "that for the purpose of instituting a suit for divorce, the wife may have a domicil separate from that of her husband" (*n*).

As the Parliament of Canada has not yet recognized the power of any Court to deal with the subject of divorce, there is nothing binding in the argument which claims, by the comity between nations, for a judgment by a foreign Court that kind of consideration and recognition by the Senate which that judgment would have before an ordinary tribunal, upon a matter the subject matter of which was common to both. The principle involved in the term comity of nations is that as the jurisdiction over the subject

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(*m*) Commons Debates, 1887, p. 1062-4.

(*n*) *Stevens* v *Fisk*, 8 Legal News, 42.

[illegible]

[illegible]

[illegible]

1. Adultery by the wife entitles the husband to a divorce, while a wife may obtain a divorce for incestuous adultery, bigamy with adultery, rape, [illegible] bestiality, [illegible] cruelty, or adultery and desertion.

2. Nullity of marriage may be [illegible] impotence or incapacity arising [illegible] from some defect of a permanent and incurable [illegible] on the [illegible] of [illegible] marriage; and [illegible] the ground of [illegible] being ground for a decree of nullity of [illegible]

The Court has the power to [illegible] years and upwards [illegible] the legal [illegible] ground [illegible] and desertion.

In Canada [illegible] the [illegible] Act passed in [illegible] Provinces in 1867 [illegible] adultery, [illegible] also [illegible] nullify marriages [illegible] separation equivalent [illegible] under a decree pronounced by the [illegible] In the consideration of the facts [illegible] ground of adultery, no distinction [illegible] the husband and wife, as happens under [illegible] petitioning wife may obtain a divorce [illegible] husband's adultery, as well as the petitioning [illegible] upon the ground of the wife's adultery.

As already stated, the Senate [illegible] bills to nullify the marriage [illegible] evidence that the same were never consummated [illegible] To these may be added the *Ash* (t) case which was a bill to dissolve [illegible] first marriage which had been already dissolved by [illegible]

(r) Senate Journals, [illegible], pp. 78, 92, 106.

(s) Senate Journals, 1887.

(t) Senate Journals, 1887.

American Court, Parliament declining to be bound by the action of a foreign tribunal. During the present (1888) session of Parliament, an application will be made to nullify a marriage upon the ground of impotency. This will be the first instance of the kind in the history of Canadian divorce.

The *Campbell* case (*u*) is one of the most peculiar in the history of divorce in Canada. In 1876, Robert Campbell petitioned for a bill of divorce from his wife on the ground of adultery. This was met by a counter petition from Mrs. Campbell charging him with cruelty and desertion. The Senate rejected Campbell's petition as not proved, and postponed further consideration of the cross-petition until the following session. In 1877 no fresh evidence was adduced, but the report of the select committee of the Senate from the previous session was taken into consideration with the result that the majority of the Senate declared Campbell's charges proved. The bill was rejected in the Commons, however, on the ground that fresh notice of the application had not been given (*v*). In 1878, Mrs. Campbell prayed leave to prosecute her cause *in forma pauperis*. This time the Senate rejected her application for want of notice. In 1879 [illegible] application *in forma pauperis* after having [illegible] and she obtained a bill equivalent to a judicial separation or a decree pronounced by the English Divorce Court, with a substantial annual cash allowance for the maintenance of herself and children. Provision was also made in the Act for enforcing the payment of the allowance. The right of Parliament to grant her maintainance and the custody of the children was warmly contested in both Houses upon the ground that these being civil rights they could only be dealt with by the Provincial Legislature under the terms of the B. N. A. Act 1867, but the result of the decision of the majority in the two Houses determined that they were incidents to marriage and divorce and as such within the competency of Parliament (*w*).

(*u*) Senate Journals, 1876, 1877, 1878, 1879.

(*v*) [illegible] Commons will always follow the practice of the Senate.

(*w*) [illegible] Wilson, C.J., held a contrary view [illegible] *Campbell* [illegible]

In all cases Parliament inquires particularly of the petitioner as to the collusion or connivance to obtain a divorce, proof of which is fatal to the application. "The Ecclesiastical Courts intended by the word *collusion*, an agreement or plan between husband and wife that one of them should commit, or appear to commit, some act upon which the other could proceed to institute a suit. That is not the meaning in which the word *collusion* is used in the English Divorce Act, which contemplates an agreement between the parties as to the institution or conduct of the suit itself; for example, where the respondent in pursuance of an arrangement with the petitioner, forbears to resist a false case, etc., or in any way becomes a party to a conspiracy to obtain a decree from the Court. The House of Lords regarded collusion in the same light as the Divorce Court now does under the statute. Where the petitioner has brought about the adultery charged against the respondent by acts expressely directed to that object, where in fact he or she has procured the commission of the offence, there is *connivance*" (x).

Having glanced at the origin and history of Parliamentary Divorce in England and Canada, and indicated more or less clearly the crude and unsettled character of the principles upon which relief may be granted with us, we will now proceed to briefly explain the procedure observed in relation to these applications. This is regulated by a few Rules or Orders of the House, evidently framed after those of the House of Lords, and they relate more especially to forms of procedure than to the means of determining the merits of an application. In all unprovided cases reference is had to the Rules and Decisions of the House of Lords (y).

Divorce bills originate in the Senate as a matter of usage, but there is no reason why they should not originate in the Commons (z). In dealing with matters of divorce as has already been said, the Senate does not sit in a judicial capacity, tied down by certain laws or precedents but it sits as a quasi-judicial and a legislative body, which has full power to act according to

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(x) *Pritchard* on Divorce, pp. 5 6.

(y) Rule 81, Senate.

(z) Senate Debates, 1877, p. [illegible], Sir Alexander Campbell.

[illegible] its place
[illegible] The Senate
[illegible] at the pres-
[illegible] with reasonable
[illegible] determin-
[illegible] without either pre-
[illegible] must be kept in
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[illegible] within
[illegible] Canada. They are dis-
[illegible] of the House of
[illegible] Lords.

[illegible] Parliament is commenced by
[illegible] the Senate and the
[illegible] is signed by the
[illegible] and prayer, the
[illegible] of the preamble
[illegible] a statement of
[illegible] the marriage ought to be dissolved.
[illegible] the parties and the ceremony (if any
[illegible] the marriage be in itself
[illegible] superfluous. The preamble
[illegible] in what manner and for
[illegible] have lived together as man and
wife, [illegible] also whether any, and if any,
[illegible] marriage. If there should have
[illegible] of adultery, the fact
[illegible] stated. If a deed of separa-
tion [illegible] of such separation, the deed
[illegible] proceeds in the next place
[illegible] the party (if known,

[illegible] the Parliament in such matter- [illegible] opinions and judgments of the [illegible] consideration of each particular case. [illegible]

[illegible] when the crime has been committed and the period when the guilty intercourse commenced. The preamble ought also [illegible] as to whether the parties are still cohabiting or apart, and ought specially to aver that the petitioner has had no intercourse with the guilty spouse since the discovery of adultery. If the adultery has been committed with more than one person, the preamble ought to specify the several persons with whom the commission of the crime is intended to be proved; for adultery not specially charged, cannot be proved. If an action at law has been resorted to by the husband against the adulterer, the facts, verdict and judgment should be stated.

There are usually three enacting clauses. The first of these enacts that the marriage is thereby dissolved, and shall be from henceforth null and void to all intents and purposes. The second clause enacts that the petitioner may at any time thereafter contract matrimony as if the dissolved marriage had not been solemnized. The effect of a divorce is that the *vinculum* is entirely broken and the man and wife stand in the same position as if the other were dead (b). The third clause enacts that the issue, if any, of such second marriage shall have and possess the same rights in every respect as if the first marriage had never been solemnized. In a few instances further relief has been enacted, as in the *Whiteaves* case (c) the marriage contract was declared void. In the *Holiwell* case (d) the husband was barred of all claim in the estate and effects of the petitioner. In the *Ritchie-Herchmer* case (e) the wife-petitioner was given the sole custody and control of the infant child. As has already been mentioned, the Bill in the *Campbell* case (f) provided for a separation, maintenance of the wife and children by the husband, the custody of the children and authority to the Court to enforce the provisions of the Act.

The petition and Bill being prepared, and the notice being given, the former should be deposited with the Clerk of the Senate at least eight days previous to the opening of Parliament.

(b) *Edward's* Law of Husband and Wife, 1882, p. 7.
(c) 39 Vict. cap. 95.
(d) 40 Vict. cap. 89.
(e) 50-51 Vict. cap. 151.
(f) 42 Vict. cap. 79.

It is usual at the same time to pay the fee of $200.00, to cover the expense which may be incurred by the Senate in passing the Bill. With this is also paid $10.00 or $15.00 to cover the cost of printing the Bill in English and French.

Rule 72 of the Senate requires every applicant for a Bill of Divorce to give six months notice of his intended application and to specify from whom and for what cause, by advertisement in the *Canada Gazette*, and in two newspapers published in the county where the applicant resided at the time of separation. By Rule 73, a copy of the notice as published in the *Canada Gazette* is to be served at the instance of the applicant on the person from whom the divorce is sought, if the residence can be ascertained; and proof by declaration under the Act respecting extra-judicial oaths of such service or of the attempts made to effect it to the satisfaction of the Senate, is to be adduced before the Senate on the reading of the petition.

On the presentation of the petition in the Senate, the Senator in charge must produce the proof of the service of the notice of application upon the respondent.

There are two instances in which, the respondent not being found, the House deemed substitutional service sufficient (*g*).

As to what may be sufficient substitutional service no rule has been laid down, but it is apprehended that such steps as may be directed by a Judge in a Court of Law in an ordinary action at law will, under similar circumstances, be recognized by the Senate in an application for a Divorce.

The evidence of service or attempts to effect the same being satisfactory, the next step is to have the petition read and received. At this stage, if any proceedings at law have been taken prior to the petition, an exemplification thereof to final judgment duly certified by the proper authority is to be presented to the House, and if damages have been awarded, proof on oath must be adduced that the same have been levied and retained, or an explanation given of neglect or inability to levy the same under an execution.

(*g*) *Martin* Case, Senate Journals, 1870, p. 79; *Ash* Case, Senate Journals, 1887, p. 30.

If the committee on standing orders reports to the House that all the orders have been complied with, the Bill is presented in the House by a Senator, and submitted to its first reading.

The second reading of the Bill cannot take place until fourteen days after the first reading; and notice of such second reading, is to be affixed to the doors of the Senate during the period, and a copy thereof and of the Bill, duly served upon the party from whom the Divorce is sought, and proof on oath of such service adduced at the Bar of the Senate, before proceeding to the second reading, or sufficient proof adduced of the impossibility of complying with the rule.

The copy of the notice of the second reading and of the Bill for service should each be signed by the clerk of the House. The person making the service should of course be provided with duplicates signed in the same way. As in the case of the service of the notice of application, there are precedents for substitutional service. Where the service has been personal, the person making service gives evidence of it at the Bar of the Senate. Substitutional service is usually proved by statutory declaration.

The terms of Rule 76 being thus complied with, Rule 77 requires the petitioner to appear below the Bar of the Senate at the second reading to be examined by the Senate, either generally, or as to any collusion, or connivance between the parties to obtain such separation, unless the Senate think fit to dispense therewith. Counsel usually accompanies the petitioner at this stage. The practice is to suspend this rule and instruct a select committee, which hears the evidence, to ask the necessary questions.

The Bill is then referred to a select committee of nine members, by whom the witnesses are heard on oath, the evidence taken down in writing and reported to the Senate with all vouchers adduced before the Senate; the preliminary evidence being that of the due celebration of the marriage between the parties by legitimate testimony either by witnesses present at the marriage, or by complete and satisfactory proof of the certificate of the officiating minister or authority.

Provision is made for the summoning of witnesses, and neglect or refusal to attend subjects the defaulter to the custody of the Usher of the Black Rod, as well as to the penalty of being obliged to pay all the expenses incurred.

The witnesses are examined and cross-examined, and the case made out by counsel subject to the ordinary rules of evidence.

Where the wife has no separate estate of her own, the House will order the husband to furnish means wherewith she may defend herself. In the *Campbell* case the petitioning husband was directed to pay the fees of the wife's counsel who opposed his application, which fees were taxed by the chairman of the committee at $500. He was also obliged to deposit $250 toward the payment of the expenses of her witnesses. Her counsel subsequently recovered from Campbell $350 or $50 a day for seven days for prosecuting the wife's cross petition for a judicial separation (*h*). In the *Gardner* case, the wife's counsel was allowed a retaining fee of $20, and $20 a day for each day's attendance. In the *Nicholson* case, the House directed the wife's counsel to be paid $20 the first day, and $10 each day thereafter and $2 a day for herself for expenses in Ottawa (*i*).

The preamble is proved clause by clause. With respect to the evidence of adultery, it may be stated that whatever convinces the committee that the act has been consummated will be sufficient (*j*). Positive evidence of the fact is rarely attainable, and therefore in the great majority of cases the allegation of adultery is substantiated by circumstances from which inferences may be drawn.

The petitioner is invariably examined as to collusion or connivance, either of which is sufficient, if proved, to prevent the petitioner from obtaining relief.

At the conclusion of the evidence, counsel are at liberty to address the committee. The committee then report to the Senate whether the preamble has been proved or not, and counsel are

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(*h*) *McDougall* v *Campbell*. 41 U. C. R. 352. [This case was reversed on appeal, but the judgment of the Court of Appeal was never reported.—Ed]

(*i*) The *Gardiner* and *Nicholson* cases were both dropped after report by the select committee of the Senate.

(*j*) *Macqueen*, p. 535.

again permitted to be heard at the Bar of the House on the evidence adduced, or on the provision for the future support of the wife. With respect to the latter point there are several precedents in the old English practice, where, when the wife brought her husband a fortune, provision was made in the Bill for her future support. There has been no such precedent in Canada, except in the *Campbell* case, which was simply a case of separation.

The Bill being favourably reported on, is then read a third time and passed, and then sent down with the evidence to the Commons. Here, it goes through the ordinary procedure of a private bill, and the House may either reject it or pass it. If amendments are made, these amendments must be subsequently concurred in by the Senate. On the Royal Assent being given, the Bill becomes law. It was the practice until 1879 for the Governor-General to reserve such Bills for the signification of Her Majesty's pleasure thereon but this need not now be done, since the change in the Royal Instructions with reference to Bills (*k*).

J. A. GEMMILL.

Ottawa, 21st February, 1888.

(*k*) *Bourinot's* Parl. Pract., p. 680.